IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 752 of 2002
with
CIVIL APPLICATION NO 2858 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO. LTD
Versus
CHHAGANLAL PUNAMCHAND JAIN

Appearance:
1. First Appeal No. 752 of 2002
MS MEGHA JANI for Petitioner No. 1
MR SANDIP C SHAH for Respondent No. 1-2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 16/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Ms. Meghaben Jani for the appellant - UNITED INDIA INSURANCE CO. LTD and Mr. Sandeep Shah, learned advocate for the original claimants. By means of this first appeal, the appellant insurance company has challenged the judgment and award made by the Motor Accident Claims Tribunal, Ahmedabad in Motor Accident Claim Petition NO. 119 of 1996 dated 28th April, 2000. Under the impugned award, the tribunal has allowed the claim petition filed by the original claimants and has directed the original opponents NO.2 and 3 to jointly and severally pay an amount of Rs.5,18,667.00 to the original claimants as compensation on account of the death of their son who has died on account of injuries sustained in an accident that took place on 22.10.1995 involving the offending vehicle being motor truck bearing Registration No. GR 3200 of the ownership of original opponent no. 2 and insured with the present appellant insurance company. The said opponents were also directed to pay the said amount with interest thereon at the rate of 12 per cent per annum from the date of the claim petition till the date of actual payment and costs.

2. Learned advocate Ms.Megha Jani appearing for the appellant insurance company has submitted that the amount awarded by the tribunal is on the higher side. According to her submission, the claim petition was filed by the claimants for Rs.5,18,667.00 and yet, the tribunal has awarded Rs. 5,06,667.00 as compensation which is an error committed by the tribunal. She has also submitted that there is an error on the part of the tribunal in calculating the compensation on the basis of second Schedule. She has also submitted that the tribunal has decided the claim petition as an application under section 166 of the Motor Vehicles Act; the claimants in this case are the father and mother of the deceased aged 48 and 45 respectively and the age of the deceased was of about 19 years. She has also submitted that since the claimants were the parents of the deceased and the deceased was unmarried, the tribunal ought to have deducted 2/3rd amount from the income of the deceased and it ought to have selected multiplier considering the age of the claimants - parents. According to her, the tribunal has committed error in selecting the multiplier on the basis of the age of the deceased. She has submitted that even if the income of the deceased is considered to be Rs.5,000.00 per month, after deducting

1/3rd therefrom, the compensation payable would be Rs.2,44,800.00 (Rs.5000.00 less 1/3rd =1700 x 12 x 12) by selecting multiplier of 12, considering the age of the parents. She has also submitted that the tribunal has also committed an error in directing the original opponents to pay the amount of compensation with interest thereon at the rate of 12 per cent per annum from the date of the claim petition till the realization. According to her submission, in view of the recent decision of the Hon'ble Supreme Court in KAUSHUMA BEGAM AND OTHERS VERSUS NEW INDIA ASSURANCE CO. LTD. AND OTHERS reported in 2001 ACJ 428, wherein rate of interest fixed at 9 %. She has also relied upon the recent decision of the apex court in case of H.S. Ahmed Hussain v. Irfan Ahammed reported in 2002 (2) GLR 1825. Thus, from the submissions made by Ms. Jani, it is clear that the award made by the tribunal has been challenged only on the ground that 2/3rd amount ought to have been deducted and the multiplier ought to have been selected by considering the age of the parents and the tribunal ought to have awarded interest at the rate of 9 per cent per annum instead of 12 per cent per annum. Except that, there is no other challenge to the impugned award. Thus, the annual income of the deceased assessed by the tribunal has not been challenged by the appellant.

On the other hand, learned advocate Mr. Sandeep Shah appearing for the respondents original claimants has submitted that the contentions raised by Ms. Megha Jani on behalf of the appellant insurance company are contrary to the settled legal position. He has submitted that the tribunal has considered the evidence on record regarding income of the deceased at page 25 and has positively recorded the finding that the deceased was earning Rs.60,000.00 per year. He has further submitted that the tribunal has also considered the alternative submission made by the advocate for the claimants and has observed that even as per the Second Schedule introduced in the year 1994 in the Motor Vehicle Act, taking maximum figure available of Rs.40,000.00 under section 163A, the compensation would be of Rs.7,60,000.00 and if 1/3rd is deducted therefrom, the ultimate figure available would be of Rs.5,06,667.00 for loss of dependency and the total amounts of compensation would be of Rs.5,18,667.00 after adding Rs.10,000.00 for loss to the estate and Rs.2,000.00 for funeral expenses. Thus, according to him, the award made by the tribunal is quite just and proper since the court has taken very conservative view and has awarded the amount as per section 163-A of the Motor Vehicles Act on the basis of Structural Formula. According to his submission, the Court cannot award more

amount for income of more than Rs.40,000.00 and, therefore, the award made by the tribunal is, on the contrary, on its lower side. He has also submitted that the tribunal has considered only actual income of the deceased at Rs.60,000.00 which was proved before the tribunal by the claimants by producing documentary evidence. He has submitted that considering future prospects of the deceased in the business which he was carrying out, as per the decision in case of SMT SARLA DIXIT AND ANOTHER VS. BALWANT YADAR & ORS reported in AIR 1996 SC 1274, future economic loss can be computed by taking actual income, figure increase of double that income, adding actual and double both together and then reducing it one half, the average future income can be considered as net income of the deceased. Thus, according to his submission, if the figure of Rs.60,000.00 is taken as actual income of the deceased as proved before the tribunal plus Rs.1,20,000.00 as future increase/double, the figure available would be of Rs.1,80,000.00 and one half thereof would be of Rs.90,000.00 which would have become the average income of the deceased had he not died and if one third is deducted by way of personal expenses of deceased, in that case, Rs.30,000.00 per year would be available to the parents. He has further submitted that considering the age of the father 48 years and mother 45 years and deceased 19 years, proper multiplier as per the Schedule would be 16 years and hence the figure of Rs.4,80,000.00 would be available for future economic loss to the claimants. He has further submitted that the tribunal has awarded only Rs.10,000.00 for loss to estate but as per the fall in the value of the rupee and the reported decision, an amount of Rs.20,000.00 is required to be awarded for loss to the estate. However, considering the year of accident 1995 and fall in value of rupee and economic conditions, said amount requires upward revision and, therefore, the tribunal ought to have awarded Rs.30,000.00 on that head. Thus, as per his submissions, even under section 166 of the Act, the claimants are entitled for Rs.4,80,000.00 towards the future economic loss; Rs.30,000.00 towards the loss to the estate and Rs.2,000.00 towards the funeral expenses and, thus, in all, the claimants are entitled to total amount of Rs.5,12,000.00 whereas the tribunal as made the award of Rs.5,18,667.00 which is just and proper.

Before considering the merits of the matter, few facts of the present case are required to be considered. Few facts of the present case are to the effect that the Claim Petition NO. 119 of 1996 was filed by the original

claimants before the tribunal wherein it has been alleged that they are the father and mother respectively of one Anilkumar Chhaganlal Jain who passed away in an accident that took place on 22.10.1995 at about 3.00 p.m. It was the case of the original claimants before the tribunal that the deceased Anil passed away on account of the injuries sustained by him in an accident involving the offending vehicle, that took place on 22.10.1995 at about 3.00 p.m. on the Jashodanagar Mehmadabad Road which accident took place according to the claimants solely on account of rash and negligent driving of the driver of the offending vehicle and, therefore, claim petition was filed before the tribunal seeking compensation from the opponents. In the same accident, another person Khimaram also passed away and the claim petition no. 354 of 1996 was filed by the claimants seeking compensation on account of death of said Khimaram in the said vehicular accident. In this appeal filed at the instance of the insurance company, the award made by the tribunal in claim petition no. 119 of 1996 alone has been challenged though common award has been made by the tribunal in respect of both the claim petitions. Learned advocate Ms. Jani for the insurance company has not challenged the question of negligence decided by the tribunal in favour of the claimants. It is also required to be noted that the claim of the appellant company is also restricted to Rs.2,70,000.00 only.

In para 18 of the impugned award, the tribunal has considered the document at Exh. 49 which was a diary which, in terms of the testimony of PW 1, being the father of the deceased Anilkumar was maintained by the deceased Anilkumar and on the basis of the said evidence as well as the testimony of PW 2, Exh. 52, the tribunal has come to the conclusion that the annual income of the deceased at the time of accident was Rs.60,000.00. The tribunal considering alternative submission made by the advocate for the claimants at the bar that if the quantum is calculated in terms of the second schedule to the provisions contained in section 163(A) of the M.V. Act and fixed the annual income of the deceased Anilkumar at Rs.40,000.00 and selecting the multiplier of 16, the tribunal was of the view that the amount of compensation would be Rs.5,06,667.00. The tribunal, therefore, awarded Rs.5,06,667.00 under the said head and added Rs.10,000.00 towards loss of expectation of life and Rs.2000.00 towards the funeral expenses and awarded total compensation of Rs. 5,18,667.00.

We have perused the award in question made by the tribunal. We have also considered the submissions made

by the learned advocates for the parties before this court. The tribunal has not recorded findings as regards contributory negligence in view of its findings given on issue no.2 and before this court also, contention as regards contributory negligence has not been raised by the appellant insurance company. It is not in dispute that the age of the deceased Anilkumar was of 19 years at the time of accident. It is the submission of Ms. Jani, learned advocate for the appellant insurance company that considering the age of the parents, the tribunal ought to have deducted 2/3rd instead of 1/3rd. It is not in dispute that the claim petition was filed before the tribunal under section 166 of the Motor Vehicles Act. The fact remains that the deceased was having annual income of Rs.60,000.00 and therefore, if the submissions made by Ms. Jani are considered, then, the tribunal has, while coming to the conclusion that the annual income of the deceased was of Rs.60,000.00, has not taken into account the future prospects, has not considered future income of the deceased which is clear from the award and not disputed by Ms. Jani. As per the decision of the apex court in case of SMT SARLA DIXIT & ANR s. BALWANT YADAR & ORS. reported in AIR 1996 SC 1274, future economic loss can be computed by taking actual income, future increase of double that income, adding both together and then reducing it one half, the average future income can be considered as net income of the deceased. Thus, according to the submission made by Ms. Jani, if the figure of Rs.60,000.00 is taken as actual income of the deceased as proved before the tribunal plus Rs.1,20,000.00 as future increase/double, the figure available would be of Rs.1,80,000.00 and one half thereof would be of Rs.90,000.00 which would have become the average income of the deceased had he not died and if one third is considered as dependency benefit to the parents, in that case, Rs.30,000.00 per year would be available to the parents as dependency benefits and then if the multiplier of 16 is adopted, then the amount available would be Rs.4,80,000.00 to the claimants for future economic loss.

The second aspect of calculation on the basis of same set of facts which has been proved before the tribunal has not been challenged before this court. Annual income of the deceased believed by the tribunal has also not been challenged by the appellant. Therefore, from the annual income of the deceased which is Rs.60,000.00, if 1/3rd is deducted, it would come to Rs.40,000.00 and considering the age of the parents of 48 and 45 respectively for father and mother, multiplier as per the second schedule would come to 13 and, therefore,

after deducting 1/3rd from Rs.60,000.00, the amount would be Rs.40,000.00 and if it is multiplied by 13, the figure available would be Rs.5,20,000.00. Therefore, in view of this different calculation on the basis of same set of facts, the amount awarded by the tribunal would be the same and it makes no much difference in the award of compensation made by the tribunal and, therefore, according to our opinion, the contention raised by Ms. Jani that the multiplier adopted by the tribunal without considering the age of the parents is not tenable because we ourselves have examined this aspect of the matter while considering total annual income of the deceased at s.60,000.00 and from that figure, 1/3rd has been deducted which has come to Rs.40,000.00 and considering the age of the parents of year 48 and 45 respectively, multiplier of 13 as per the Second Schedule has been adopted for the purpose of our calculation, and if that has to be applied, total amount of compensation would be of Rs.5,20,000.00 and, therefore, such contention raised by Ms. Jani, learned advocate for the appellant insurance company is not legally tenable and is required to be rejected on the basis of the fact that even otherwise, even if that formula would have been adopted by the tribunal, then also, the amount of compensation would have gone beyond Rs.5,00,000.00. We ourselves have calculated the compensation on the basis of future income as per the decision reported in AIR 1996 SC 1274. Considering that formula also, the amount of compensation comes to Rs.4,80,000.00 and if the amount under the head of loss of estate and funeral expenses is added to the amount of compensation of Rs.4,80,000.00, the total figure would come to Rs.5,12,000.00 and, therefore, on both type of calculation, ultimate figure awarded by the tribunal is more or less same and, therefore, in our opinion, the tribunal has not committed any error while adopting the structural formula for awarding compensation to the claimants under section 166 of the Motor Vehicles Act. At this juncture, learned advocate Mr. Sandeep Shah appearing for the original claimants has submitted that originally, the claim petition was filed claiming compensation of Rs.5,00,000.00. However, the tribunal has awarded compensation in favour of the claimants at Rs.5,18,667.00 and, therefore, he has submitted that the claim of the claimants may be reduced to Rs.5,00,000.00 as per the claim initially made by the claimants.

Learned advocate Ms. Jani has then reiterated her contention that the tribunal has committed an error in directing the appellant insurance company to pay the amount of compensation with 12 per cent interest per annum from the date of the claim petition till the date

of payment. According to her submission, in view of the recent decision of the Hon'ble Supreme Court in KAUSHUMA BEGAM AND OTHERS VERSUS NEW INDIA ASSURANCE CO. LTD. AND OTHERS reported in 2001 ACJ 428 and also in view of the decision of the apex court in case of H.S. Ahmed Hussain v. Irfan Ahammed reported in 2002 (2) GLR 1825, wherein the apex court has observed that earlier, 12 per cent was found to be the reasonable rate of simple interest. With change in the economy and policy of the Reserve Bank of India, rates of interest have been lowered down and even the Nationalized Banks are granting interest of 9 per cent per annum on the Fixed Deposit for one year. Therefore, considering this aspect, the apex court has fixed the rate of interest 9 per cent. Therefore, in view of the said decisions of the apex court, the tribunal ought to have awarded 9 per cent interest instead of 12 per cent on the amount of compensation from the date of claim petition till the date of realization. It requires to be noted that there is no substance in the submissions made by learned advocate Ms.Megha Jani. However, in view of two recent decisions of the Apex Court, even Mr.Sandeep Shah, learned advocate has not seriously objected the submission made by learned advocate Ms.Megha Jani. We have considered submissions made by learned advocate Ms.Jani and also considered the decisions cited before us. Looking to the observations made by the Apex Court in above referred two cases and considering the recent trend of the Reserve Bank of India in reduction of rate of interest from 12 % to 9%, we are of the opinion that the tribunal has committed error in granting 12 % interest on compensation from the date of claim petition till the date of realization. Therefore, rate of interest, in our considered opinion, requires to be reduced from 12 % to 9%.

We have examined the Appeal in light of the contentions raised by learned advocate Ms.Megha Jani from all corners and have also appreciated the evidence which were once appreciated by the Tribunal. According to our opinion, the Tribunal was also right in selecting multiplier of 16 while considering the structure formula of annual income of Rs.40,000/- of the deceased. According to our opinion, it is very just and fair award rendered by the Tribunal and the same does not required any interference on that count. However, it is well established principle that the determination of quantum of compensation must answer what contemporary society "would deemed to be a fair sum such as would allow the wrong doer to hold up his head among his neighbours and

say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales. All this means that sum awarded must be fair and reasonable by the accepted legal standards". It is necessary to note one important aspect that submissions made by learned advocate Ms.Megha Jani that looking to the age of the appellant, two third income is required to be deducted instead of one third and looking to the age of the parent, 12 multiplier is applied instead of 16. Perhaps this submission is made by learned advocate Ms.Jani on the basis of the fact that tribunal has decided the claim petition as if under Section 163-A of the Motor Vehicle Act but in fact, the claim petition was filed by the claimants under Section 166 of the Motor Vehicle Act. However, it transpires that the Tribunal has accepted the alternative submission of the learned advocate appearing on behalf of the claimant that even formula mentioned or the method suggested in Second Schedule is accepted, then also, the very figure will come as compensation. On such basis, the tribunal has calculated the compensation relying upon the annual income of Rs.40,000/- of the deceased but if submission made by learned advocate Ms.Jani is required to be examined, then, we should have to consider the annual income of the deceased at Rs.60,000/- which has been proved before the Tribunal and not disputed by learned advocate Mr.Megha Jani. Therefore, we have taken into consideration the amount of Rs.60,000/- as annual income of the deceased instead of Rs.40,000/- as accepted by the claimants. The claimant has accepted Rs.40,000/- to be just in order to get immediate result of the claim petition but in such eventuality, they should not be put in adverse situation if such award is challenged by the Insurance company. Annual income of the deceased was proved to be Rs.60,000/- before the tribunal and the same was not disputed by the Insurance Company. Therefore, submission of Ms.Megha Jani is tasted by us taking into account the annual income of Rs.60,000/- of the deceased and not Rs.40,000/- which was accepted by the claimant because the claim petition was filed under Section 166 of the Motor Vehicle Act. Therefore, in view of above facts and circumstances of the case, ultimately the anxiety of this Court is to see that whether tribunal has rightly awarded the compensation or not ? Considering the totality of the facts and circumstances of the case, we are of the view that the award passed by the tribunal on the basis of the annual income of Rs.40,000/- of the deceased, if considered at Rs.60,000/- as annual income, on both these counts, the ultimate result of compensation amount would be same and therefore, we are satisfied with

the reasoning and conclusion given by the Tribunal. However, considering the submissions made by learned advocate Mr.Sandeep Shah that the amount of compensation may be restricted to Rs.5,00,000/- as per the claim made by the claimants in their claim petition, the amount of compensation of Rs.5,18,667/- requires to be reduced to Rs.5,00,000/- and accordingly, the appellant company is required to pay the amount of compensation to the claimants and cost as awarded by the tribunal.

In view of these facts, in the result, the amount of compensation of Rs.5,18,667.00 is reduced to Rs.5,00,000.00 and accordingly the appellant insurance company is required to make payment to the claimants with 9 [nine] per cent interest per annum from the date of claim petition till the date of realization. If the appellant company has deposited the amount before the tribunal as per the award made by the tribunal, then, the tribunal shall refund the amount if any pursuant to the modification made by this Court in the award. It is clarified that this Court has modified the award only in compensation from Rs.5,18,667.00 to Rs.5,00,000.00 considering the submission made by learned advocate Mr.Sandeep Shah appearing on behalf of the respondents, whereas the rate of interest is reduced from 12 % to 9 % keeping in mind two recent decisions of the Apex Court referred to above. The rest of the directions issued by the tribunal under the impugned award regarding interest, costs and disbursement etc. shall remain intact and unaltered.

This appeal stands allowed accordingly with no order as to costs. In view of the fact that we have modified the impugned award, office is directed to send modified award along with the Records and Proceedings to the concerned tribunal immediately, without any delay.

In view of the above orders made on the main matter, Civil Application No. 2858 of 2002 shall not survive and the same will therefore stand disposed of as not surviving with no order as to costs.

Dt. 16.9.2002. [Kshitij R.Vyas,J.]

[H.K. Rathod,J.]

Vyas